1	BILL LOCKYER, Attorney General		
2	of the State of California SUSAN A. RUFF, State Bar No. 115869		
3	Deputy Attorney General California Department of Justice		
4	110 West "A" Street, Suite 1100 San Diego, CA 92101		
5	P.O. Box 85266		
6	San Diego, CA 92186-5266 Telephone: (619) 645-2077		
7	Facsimile: (619) 645-2061		
8	Attorneys for Complainant		
9	BEFORE THE CALIFORNIA BOARD OF ACCOUNTANCY		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
1 1	In the Matter of the Accusation Against:	Case No. AC-2004-21	
12	J. BEN VERNAZZA	OAH No. N-2004050430	
13	1641 Calypso Drive Aptos, CA 95003	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER	
14	C	DISCIPLINARY ORDER	
15	Certificate No. CPA 8850		
16	Respondent.		
17	In the interest of a prompt and speedy settlement of this matter, consistent with the		
18	public interest and the responsibility of the Board, the parties hereby agree to the following		
19	Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval		
20	and adoption as the final disposition of the Accusation.		
21	<u>PARTIES</u>		
22	1. Carol Sigmann (Complainant) is the Executive Officer of the California		
23	Board of Accountancy (Board). She brought this action solely in her official capacity and is		
24	represented in this matter by Bill Lockyer, Attorney General of the State of California, by Susan		
25	A. Ruff, Deputy Attorney General.		
26	2. Respondent J. Ben Vernazza (Respondent) is represented in this		
27	proceeding by lay representative Charles Benninghoff, whose address is: Benninghoff & Ramirez		
28	31897 Del Obispo, Suite 220, San Juan Capistrano, CA 92675.		
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3. On or about March 16, 1961, the Board issued Certificate No. CPA 8850 to Respondent. The Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2004-21.

### JURISDICTION

4. Accusation No. AC-2004-21 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 8, 2004. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2004-21 is attached as exhibit A and incorporated herein by reference.

### ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, fully discussed with his lay representative, and understands the charges and allegations in Accusation No. AC-2004-21. Respondent has also carefully read, fully discussed with his lay representative, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

#### **CULPABILITY**

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. AC-2004-21.
- 9. Respondent agrees that his Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

### CONTINGENCY

- The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

### DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certificate No. CPA 8850 issued to Respondent J. Ben Vernazza is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

- 1. Actual Suspension. Certificate No. CPA 8850 issued to Respondent is suspended for 30 days, beginning on the effective date of this Decision. During the period of suspension the Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.
- 2. **Obey All Laws.** Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.
- 3. **Submit Written Reports.** Respondent shall submit, within ten (10) days of completion of the quarter, written reports to the Board on a form obtained from the Board. The Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.
- 4. **Personal Appearances.** Respondent shall, during the period of probation. appear in person at interviews/meetings as directed by the Board or its designated

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representatives, provided such notification is accomplished in a timely manner.

- 5. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of the Respondent's compliance with probation terms and conditions.
- 6. **Practice Investigation.** Respondent shall be subject to, and shall permit, a practice investigation of the Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.
- 7. **Comply With Citations.** Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.
- Respondent should leave California to reside or practice outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.
- 9. Violation of Probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
- 10. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

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Ethics Course/Examination. Respondent shall take and pass with a score 11. of 90 percent or better a Board approved ethics examination within 90 days of the effective date of the Board's Decision.

If Respondent fails to pass said examination within the time period provided or within two attempts, Respondent shall so notify the Board and shall cease practice until Respondent takes and successfully passes said exam, has submitted proof of same to the Board, and has been notified by the Board that he may resume practice. Failure to pass the required examination within the first year of probation shall constitute a violation of probation.

Cost Reimbursement. Respondent shall reimburse the Board \$3,267.03 12. for its investigation and prosecution costs. The payment shall be made within 30 days of the date the Board's decision is final.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my lay representative Charles Benninghoff. I understand the stipulation and the effect it will have on my Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED:

I. BEN VERNA Respondent

I have read and fully discussed with Respondent I. Ben Vernazza the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary

Order. I approve its form and content.

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November 24, 2004 DATED:

Marly & Benning hoff II

CHARLES BENNINGHOFF Lay representative for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

BILLLOO Attorne of the S1

Deputy Attorney General

Attorneys for Coroplainant

DOJ Matter ID: SD2003800579 VernazzaStip.wpd

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DATED:

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27 28 ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my lay representative Charles Benninghoff. I understand the stipulation and the effect it will have on my Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

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J. BEN VERNAZZ Respondent

I have read and fully discussed with Respondent J. Ben Vernazza the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary

Order. I approve its form and content.

DATED: 15 1 100

CHARLES BENNINGHOFF
Lay representative for Respondent

<u>ENDORSEMENT</u>

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED:

BILL LOCKYER, Attorney General of the State of California

SUSAN A. RUFF Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2003800579 VernazzaStip.wpd

# BEFORE THE CALIFORNIA BOARD OF ACCOUNTANCY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

3	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
4	In the Matter of the Accusation Against:	Case No. AC-2004-21	
5	J. BEN VERNAZZA	OAH No. N-2004050430	
6 7	1641 Calypso Drive Aptos, CA 95003		
8	Certificate No. CPA 8850		
9	Respondent.		
10			
11	<u>DECISION AND ORDER</u>		
12	The attached Stipulated Settlement and Disciplinary Order is hereby adopted by		
13	the CALIFORNIA BOARD OF ACCOUNTANCY	as its Decision in the above-entitled	
14	matter.		
15			
16	This Decision shall become effective on	<u>January 25</u> , 2005.	
17	It is so Ordered on this <u>25th</u> day o	f <u>January</u> , 2005.	
18			
19		Kenchmon	
20		RENATA M. SOS, BOARD PRESIDENT	
21		For the California Board of Accountancy California Department of Consumer Affairs	
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# Exhibit A Accusation No. AC-2004-21

11		
1	BILL LOCKYER, Attorney General	
2	of the State of California SUSAN A. RUFF, State Bar No. 115869	
3	Deputy Attorney General California Department of Justice	
4	110 West "A" Street, Suite 1100 San Diego, CA 92101	
5	P.O. Box 85266	
6	San Diego, CA 92186-5266 Telephone: (619) 645-2077 Facsimile: (619) 645-2061	
7	Attorneys for Complainant	
8	BEFORE THE	
9	CALIFORNIA BOARD OF ACCOUNTANCY DEPARTMENT OF CONSUMER AFFAIRS	
10	STATE OF CALIFORNIA	
11	I do Nation of the Approprian Against:	Case No. AC-2004-21
12	In the Matter of the Acoustion Lightness.	285 No. AC-2004-21
13	J. BEN VERNAZZA 1641 Calypso Drive Aptos, CA 95003	ACCUSATION
14		
15		
16	Respondent.	
17		
18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Carol Sigmann (Complainant) brit	ngs this Accusation solely in her official
21	capacity as the Executive Officer of the California Board of Accountancy, Department of	
22	Consumer Affairs.	
23	2. On or about March 16, 1961, the 0	California Board of Accountancy issued
24	Certificate Number CPA 8850 to J. Ben Vernazza (Respondent). The Certificate will expire on	
25	March 1, 2006, unless renewed.	
26	5 ///	
27	7   ///	
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### JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 5100 of the Code states, in pertinent part:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

• • •

- "(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.
- "(h) Suspension or revocation of the right to practice before any governmental body or agency."

. . .

- "(1) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation."
  - 5. Section 5063, subdivision (a), of the Code states, in pertinent part:

"A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

"(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency."

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Sections 5109 and 118, subdivision (b), of the Code provide that the 6. suspension or expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action.

### FIRST CAUSE FOR DISCIPLINE

(Suspension Imposed by the Securities and Exchange Commission)

- Respondent is subject to disciplinary action under Code sections 5100(h) 7. and/or 5100(1), based on the suspension imposed by the United States Securities and Exchange Commission (SEC). The circumstances are as follows:
- On or about January 12, 1998, in administrative proceeding number 8. 3-9042 before the SEC, entitled "In the Matter of IMS/CPAs & Associates, Vernon T. Hall, Stanley E. Hargrave and Jerome B. Vernazza," respondent's registration as an investment advisor was suspended for six months and respondent was suspended from being associated with an investment advisor for six months. Respondent appealed that initial decision to the SEC.
- On or about November 5, 2001, the SEC issued its de novo decision in 9. Case number 3-9042. Because respondent had withdrawn his investment advisor registration in 1997, the SEC ruled that the six month suspension of his investment advisor registration was moot. However, the SEC upheld the portion of the decision which suspended respondent from being associated with an investment advisor for six months. In addition, the SEC upheld the portion of the decision which suspended for six months the investment advisor registration of IMS/CPAs & Associates (IMS), a firm in which respondent was a principal. Respondent and IMS appealed that decision, and the suspensions were stayed. On or about April 24, 2003, the Ninth Circuit upheld the decision and the suspensions.

# SECOND CAUSE FOR DISCIPLINE

(Failure to Report )

Respondent is subject to disciplinary action under Code sections 5100(g) 10. and 5063 in that he failed to timely report to the Board about the six month suspensions imposed by the SEC. The circumstances surrounding the suspensions are more particularly set forth in paragraphs 7 through 9, above.

## THIRD CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

Respondent is subject to disciplinary action under section 5100 in that he committed acts constituting unprofessional conduct as more particularly set forth in paragraphs 7 through 10, above.

### <u>PRAYER</u>

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

- 1. Revoking, suspending or otherwise imposing discipline on Certificate Number CPA 8850, issued to respondent.
  - 2. Taking such other and further action as deemed necessary and proper.

DATED: March 29, 2004

CAROL SIGMANN

Executive Officer

California Board of Accountancy Department of Consumer Affairs

State of California Complainant

SD2003800580

80013930.wpd